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DEPARTMENT OF THE TREASURY

31 CFR Part 150

RIN 1505–AC59

Assessment of Fees on Certain Bank Holding Companies and Nonbank Financial Companies Supervised by the Federal Reserve Board to Cover the Expenses of the Financial Research Fund

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury (“Treasury”) is issuing this final rule to implement section 401 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (the “Economic Growth Act”), which amends section 155 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”). As amended, section 155 requires the Secretary of the Treasury to establish, by regulation, an assessment schedule applicable to bank holding companies with total consolidated assets of \$250 billion or greater and nonbank financial companies supervised by the Board of Governors of the Federal Reserve System (“the Board”), to collect assessments equal to the total expenses of the Office of Financial Research (the “OFR”). The final rule also simplifies the method for determining the amount of total assessable assets for foreign banking organizations, which is made possible by a new regulatory data source. This rule finalizes a November 4, 2019 proposed rule without change.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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927-8372.

SUPPLEMENTARY INFORMATION:

I. Background

Section 155(d) of the Dodd-Frank Act directs the Secretary of the Treasury to establish, by regulation, and with the approval of the Financial Stability Oversight Council (the “Council”), an assessment schedule to collect assessments from certain companies equal to the total expenses of the OFR. On May 21, 2012, Treasury published a final regulation implementing section 155(d) in the Federal Register, codified at 31 CFR part 150 (the “Original Rule”). Before the enactment of the Economic Growth Act, pursuant to section 155(d) and the implementing regulation, Treasury collected assessments from bank holding companies with total consolidated assets of \$50,000,000,000 or greater and nonbank financial companies supervised by the Board.

On May 24, 2018, the Economic Growth Act was signed into law. Section 401(c)(1) of the Economic Growth Act replaced the \$50 billion reference in section 155(d) of the Dodd-Frank Act with \$250 billion. In addition, section 401(f) of the Economic Growth Act required any bank holding company identified as a global systemically important bank holding company (“G-SIB”) pursuant to 12 CFR 217.402 to be considered a bank holding company with total consolidated assets equal to or greater than \$250 billion for purposes of section 155(d) of the Dodd-Frank Act. As a result of this statutory amendment, bank holding companies with less than \$250 billion in total consolidated assets that are not G-SIBs are not to be assessed under Dodd-Frank Act section 155(d).

The Economic Growth Act sets forth two different effective dates. For bank holding

companies with total consolidated assets of less than \$100 billion, it became effective on May 24, 2018 (the date of enactment). For bank holding companies with total consolidated assets of \$100 billion or more and for G-SIBs, the effective date was November 24, 2019 (18 months after the date of enactment). This final rule, in part, implements section 401.

Under section 118 of the Dodd-Frank Act, the expenses of the Council are treated as expenses of, and are paid by, the OFR. In addition, under section 210 of the Dodd-Frank Act, certain implementation expenses of the Federal Deposit Insurance Corporation (“FDIC”) associated with the FDIC’s orderly liquidation authority are treated as expenses of the Council,¹ and the FDIC is directed to periodically submit requests for reimbursement to the Chairperson of the Council. The total expenses for the OFR therefore include the combined expenses of the OFR and the Council and certain expenses of the FDIC. All of these expenses are paid out of the Financial Research Fund (the “FRF”), a fund managed by Treasury.

The Council was established by the Dodd-Frank Act to identify risks to U.S. financial stability, promote market discipline, and respond to emerging threats to the stability of the U.S. financial system. The Council is chaired by the Secretary of the Treasury, and its 15 members include all of the federal financial regulators, an independent member with insurance expertise appointed by the President, and state financial regulators.

The OFR was established within Treasury by the Dodd-Frank Act to support the Council and its member agencies. Among the OFR’s key duties are:

- Collecting data on behalf of the Council and providing such data to the Council and member agencies;

¹Under Section 210(n)(10)(C) of the Dodd-Frank Act the term implementation expenses “(i) means costs incurred by [the FDIC] beginning on the date of enactment of this Act, as part of its efforts to implement [Title II] that do not relate to a particular covered financial company; and (ii) includes the costs incurred in connection with the development of policies, procedures, rules, and regulations and other planning activities of the [FDIC] consistent with carrying out [Title II].”

- Standardizing the types and formats of data reported and collected;
- Performing research;
- Developing tools for risk measurement and monitoring; and
- Reporting to Congress and the public on the OFR's assessment of significant financial market developments and potential emerging threats to U.S. financial stability.

II. The Proposed and Final Rule

Treasury issued a proposed rule on November 4, 2019, to implement the changes to the FRF assessments required by the Economic Growth Act.² The proposed rule also included certain other amendments to 31 CFR part 150 to simplify the method for determining the amount of total assessable assets for certain entities, to remove outdated references to the initial assessment period (which concluded in 2013), and to make other non-substantive changes to add clarifying or remove redundant language.

Treasury received no public comments on the proposed rule. Accordingly, Treasury is issuing this final rule as proposed. Following is a description of the changes the final rule makes to the Original Rule.

a. Determination of Assessed Companies

To impose assessments under section 155 of the Dodd-Frank Act, Treasury must identify companies that are subject to the assessment. As described in the Original Rule and below, Treasury works closely with the Board to determine the population of assessed companies.

The original text of Dodd-Frank Act section 155(d) required assessments to be collected from bank holding companies with total consolidated assets of \$50 billion or greater and

² 84 FR 59320 (November 4, 2019).

nonbank financial companies supervised by the Board. The Economic Growth Act raised the asset threshold for bank holding companies to \$250 billion and also stated that a bank holding company, regardless of asset size, that has been identified as a G-SIB under § 217.402 of title 12, Code of Federal Regulations, shall be considered a bank holding company with total consolidated assets equal to or greater than \$250 billion for purposes of section 155(d) of the Dodd-Frank Act.

Accordingly, the final rule changes the definitions of “Assessed Company” and “Total Assessable Assets” in 12 CFR 150.2, and deletes the reference to foreign banking organizations with less than \$50 billion in 12 CFR 150.5.

b. Determination of Total Assessable Assets

i. Foreign Banking Organizations

At the time of adoption of the Original Rule, there was no single regulatory reporting form that provided a foreign banking organization’s total assets of combined U.S. operations, including its U.S. branches, agencies, and subsidiaries. The preamble to the Original Rule specifically noted the possibility that reporting requirements for foreign banking organizations would change over time and that the list of reports would need to be adjusted.³ To allow for the possibility of these changes, the Original Rule did not include a list of specific reference reports for foreign banking organizations, in contrast to U.S. bank holding companies. It was noted that calculating banking organizations’ total assets of combined U.S. operations based on multiple reports could result in double-counting.⁴ The preamble to the Original Rule stated that Treasury would make every effort to avoid double-counting, consulting with the Board and the affected

³ 77 FR 29890 (May 21, 2012).

⁴ 77 FR 29888-89 (May 21, 2012).

firms as necessary, and that any questions could be addressed through the appeals process.⁵

After the adoption of the Original Rule, the Board modified its form FR Y-7Q by adding a line item for reporting the total combined assets of a foreign banking organization's U.S. operations. Line item 6 of part 1A of FR Y-7Q now requires reporting of the total combined assets of a top-tier foreign banking organization's U.S.-domiciled affiliates, branches, and agencies, excluding intercompany balances and intercompany transactions between those entities to the extent such items are not already eliminated in consolidation.⁶ Accordingly, to simplify the method for determining the amount of total assessable assets for foreign banking organizations and to adopt an approach for foreign banking organizations comparable to the approach under the Original Rule for U.S. bank holding companies, the final rule includes changes to the definition of "total assessable assets" by specifying that the calculation of a foreign banking organization's total assessable assets shall be based on the data reported in the FR Y-7Q.

ii. Timing of Determination Dates, Billing, and Collection

Under the Original Rule, assessments were semiannual. On the specified determination date before each assessment period, Treasury determined the pool of assessed companies, which received confirmation statements. After any appeals, assessments were debited from assessed companies' accounts on the assessment payment date.

The Original Rule generally used a period of four calendar quarters to measure the total assessable assets of both U.S. and foreign entities for assessments. Thus, for the assessment period with a November 30 determination date, total assessable assets were based on the company's regulatory filings for the fourth quarter of the previous calendar year and the first

⁵ 77 FR 29889 (May 21, 2012).

⁶ See Federal Reserve, The Capital and Asset Report for Foreign Banking Organizations—FR Y-7Q, available at https://www.federalreserve.gov/reportforms/forms/FR_Y-7Q20190331_f.pdf.

three quarters of the same calendar year. For the assessment period with a May 31 determination date, total assessable assets were based on the company's filings for the last three quarters of the previous year and the first quarter of the same calendar year.

Both the Federal Reserve's form FR Y-9C, which the Original Rule required to be used to determine total assessable assets of U.S. bank holding companies, and the FR Y-7Q, which the final rule incorporates to determine the total assessable assets of foreign banking organizations, are quarterly reports. Their filing deadlines, however, are asynchronous, as the FR Y-9C generally must be filed within 40 calendar days after each calendar quarter,⁷ and the FR Y-7Q generally must be filed within 90 calendar days after the quarter ends. The timing of updated reports therefore varies. For example, on the determination date of May 31 under the Original Rule, the FR Y-9C reports were already available for Q1 of the same year, but Q1 reports on FR Y-7Q were not due until approximately one month later (June 29).

To enable consistency in the timing of determining assessable assets for U.S. and foreign entities, the final rule moves each of the two semiannual determination dates one month earlier. Accordingly, the first determination date in each calendar year will be April 30 instead of May 31 as under the Original Rule, and the second determination date will be October 31, instead of November 30 as under the Original Rule. This change enables each assessment to be based on companies' filings for the last two calendar quarters of the previous year and the first two quarters of the current calendar year for assessment periods with an October 31 determination date, and all four quarters of the previous calendar year for assessment periods with an April 30 determination date.

Consistent with Treasury's process under the Original Rule, the final rule provides that before each assessment period, after determining the pool of assessed companies and publishing

⁷ Reports as of December 31 are due 45 calendar days later.

an assessment fee rate, Treasury will calculate the assessment fee for each assessed company, send an electronic billing notification to each assessed company, and, on the assessment payment date, initiate a direct debit to each company's account through www.pay.gov to collect the assessments. The final rule retains the process under the Original Rule, with one additional month added to the beginning of each cycle, as described above, while keeping the dates under the Original Rule for the notice of fees, billing, and payment. In order to provide additional clarity as to when redetermination requests must be received from companies wishing to appeal their status as an assessed company or the total assessable assets that the Department has determined will be used for calculating the company's assessment, the final rule amends the reference to such date in 12 CFR 150.6(b) from "one month" to "30 calendar days."

The table below shows approximate dates of the assessment billing and collection process under the final rule:

Assessment Period	Determination Date	Confirmation Statement Date	Redetermination Request Deadline	Initial Response to Redetermination Request	Publication of Notice of Fees*	Billing Date	Payment Date
1st semiannual assessment period (April - September)	October 31	November 15 (or next business day)	30 calendar days from date of Confirmation Statement	21 calendar days from receipt of Redetermination Request	February 15 (or next business day)	March 1 (or prior business day)	March 15 (or next business day)
2nd semiannual assessment period (October - March)	April 30	May 15 (or next business day)	30 calendar days from date of Confirmation Statement	21 calendar days from receipt of Redetermination Request	August 15 (or next business day)	September 1 (or prior business day)	September 15 (or next business day)

*Rate published in the Notice of Fees

The timeframe for sending confirmation statements and receiving appeals under the final remains the same as under the Original Rule. Specifically, confirmation statements will continue to be mailed no later than 15 calendar days after the determination date, and appeals by assessable companies will continue to be due one month later. In addition to promoting consistent measurements of U.S. and foreign entities, as noted above, adding a month to the

beginning of the FRF assessments cycle will also afford assessed companies additional time to address appeals and make payment arrangements, and will provide Treasury additional time to calculate assessments and administer the billing process.

III. Administrative Law Matters

a. Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (the “RFA”) to address concerns related to the effects of agency rules on small entities.⁸ Treasury is sensitive to the impact its rules may impose on small entities. The RFA requires agencies either to provide an initial regulatory flexibility analysis with a proposed rule for which general notice of proposed rulemaking is required, or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.⁹

Under regulations issued by the Small Business Administration, a “small entity” includes those firms within the “Finance and Insurance” sector with asset sizes that vary from \$7.5 million in assets to \$600 million or less in assets.¹⁰ For purposes of the RFA, entities that are banks are considered small entities if their assets are less than or equal to \$600 million.

As discussed above, under section 155 of the Dodd-Frank Act, as amended by the Economic Growth Act, only bank holding companies with more than \$250 billion in total consolidated assets, G-SIBs, and nonbank financial companies supervised by the Board will be subject to assessments under the final rule. As such, the final rule will not apply to small entities and a regulatory flexibility analysis is not required.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), it is hereby certified that this

⁸ 5 U.S.C. 601 *et seq.*

⁹ 5 U.S.C. 603(a).

¹⁰ 13 CFR 121.201.

final rule will not have a significant economic impact on a substantial number of small entities.

b. Paperwork Reduction Act

We estimate that there are certain direct costs associated with complying with these rules. On a one-time basis, assessed entities are required to set up a bank account for fund transfers and to provide the required information to Treasury through an information collection form. The form includes bank account routing information and contact information for the individuals at the company who will be responsible for setting up the account and ensuring that funds are available on the billing date. We estimate that approximately 20 companies could be affected, and that completing the form and submitting it to Treasury will take approximately 15 minutes. The aggregate paperwork burden is estimated at 5.0 hours. However, all of these companies have already established an account for payments or collections to the U.S. Government pursuant to the Original Rule.

On a semiannual basis, assessed companies have the opportunity to review the confirmation statement and assessment bill. The final rule does not require the companies to conduct this review, but does permit it. We anticipate that at least some of the companies will conduct reviews, in part because the cost associated with it is very low.

The collection of information contained in the final rule has been reviewed and approved by the Office of Management and Budget (OMB) under OMB control number 1505-0245. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a valid OMB control number.

c. Regulatory Planning and Review (Executive Orders 12866 and 13563)

This final rule is not a significant regulatory action as defined in section 3(f) of Executive Order 12866 as supplemented by Executive Order 13563.

List of Subjects in 31 CFR Part 150

Bank holding companies, Financial research fund, Nonbank financial companies.

For the reasons set forth in the preamble, title 31, part 150, of the Code of Federal Regulations is revised to read as follows:

PART 150 – FINANCIAL RESEARCH FUND

Sec.

150.1 Scope.

150.2 Definitions.

150.3 Determination of assessed companies.

150.4 Calculation of assessment basis.

150.5 Calculation of assessments.

150.6 Notice and payment of assessments.

Authority: 12 U.S.C. 5345; 31 U.S.C. 321; 12 U.S.C. 5365 *note* (Section 401(d), Pub. L. 115-174, 132 Stat. 1358; Section 401(f), Pub. L. 115-174, 132 Stat. 1359).

§ 150.1 Scope.

The assessments contained in this part are made pursuant to the authority contained in 12 U.S.C. 5345.

§ 150.2 Definitions.

As used in this part:

Assessed company means:

(1) A bank holding company that has \$250 billion or more in total assessable assets; or

(2) A bank holding company, regardless of asset size, that has been identified as a global systemically important bank holding company under § 217.402 of title 12, Code of Federal Regulations; or

(3) A nonbank financial company that the Council has determined under section 113 of the Dodd-Frank Act shall be supervised by the Board.

Assessment basis means, for a given assessment period, an estimate of the total expenses that are necessary or appropriate to carry out the responsibilities of the Office of Financial Research (OFR) and the Council as set out in the Dodd-Frank Act (including an amount necessary to reimburse reasonable implementation expenses of the Corporation that shall be treated as expenses of the Council pursuant to section 210(n)(10) of the Dodd-Frank Act).

Assessment fee rate, with regard to a particular assessment period, means the rate published by the Department for the calculation of assessment fees for that period.

Assessment payment date means:

(1) For any assessment period ending on March 31 of a given calendar year, September 15 of the prior calendar year; and

(2) For any assessment period ending on September 30 of a given calendar year, March 15 of the same year.

Assessment period means:

(1) Any period of time beginning on October 1 and ending on March 31 of the following calendar year; or

(2) Any period of time beginning on April 1 and ending on September 30 of the same calendar year.

Bank holding company means:

(1) A bank holding company as defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841); or

(2) A foreign banking organization.

Board means the Board of Governors of the Federal Reserve System.

Corporation means the Federal Deposit Insurance Corporation.

Council means the Financial Stability Oversight Council.

Department means the Department of the Treasury.

Determination date means:

(1) For any assessment period ending on March 31 of a given calendar year, April 30 of the prior calendar year; and

(2) For any assessment period ending on September 30 of a given calendar year, October 31 of the prior calendar year.

Dodd-Frank Act means the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Foreign banking organization means a foreign bank or company that is treated as a bank holding company for purposes of the Bank Holding Company Act of 1956, pursuant to section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)).

OFR means the Office of Financial Research established by section 152 of the Dodd-Frank Act.

Total assessable assets means:

(1) For a bank holding company other than a foreign banking organization, the average of the company's total consolidated assets for the four quarters preceding the relevant determination

date, as reported on the bank holding company's four most recent Consolidated Financial Statements for Bank Holding Companies—FR Y-9C filings;

(2) For any foreign banking organization, the average of the company's total assets of combined U.S. operations for the four quarters preceding the relevant determination date, as reported on the foreign banking organization's four most recent quarterly Capital and Asset Report for Foreign Banking Organizations—FR Y-7Q filings, or, if the foreign banking organization only files such form annually, the average of the two most recent annual filings on such form; or

(3) For a nonbank financial company that the Council has determined under section 113 of the Dodd-Frank Act shall be supervised by the Board, either the average of the company's total consolidated assets for the four quarters preceding the relevant determination date, if the company is a U.S. company, or the average of the total assets of the company's combined U.S. operations for the four quarters preceding the relevant determination date, if the company is a non-U.S. company.

§ 150.3 Determination of assessed companies.

(a) The determination that a bank holding company or a nonbank financial company is an assessed company will be made by the Department.

(b) The Department will apply the following principles in determining whether a company is an assessed company:

(1) For tiered bank holding companies for which a holding company owns or controls, or is owned or controlled by, other holding companies, the assessed company shall be the top-tier, regulated holding company.

(2) In situations where more than one top-tier, regulated bank holding company has a legal authority for control of a U.S. bank, each of the top-tier regulated holding companies shall be designated as an assessed company.

(3) In situations where a company has not filed four consecutive quarters of the financial reports referenced above for the most recent quarters (or two consecutive years for annual filers of the FR Y-7Q or successor form), such as may be true for companies that recently converted to a bank holding company, the Department will use, at its discretion, other financial or annual reports filed by the company, such as Securities and Exchange Commission (SEC) filings, to determine a company's total consolidated assets.

(4) In situations where a company does not report total consolidated assets in its public reports or where a company uses a financial reporting methodology other than U.S. generally accepted accounting principles (GAAP) to report on its U.S. operations, the Department will use, at its discretion, any comparable financial information that the Department may require from the company for this determination.

(c) Any company that the Department determines is an assessed company on a given determination date will be an assessed company for the entire assessment period related to such determination date, and will be subject to the full assessment fee for that assessment period, regardless of any changes in the company's assets or other attributes that occur after the determination date.

§ 150.4 Calculation of assessment basis.

For each assessment period, the Department will calculate an assessment basis that shall be sufficient to replenish the Financial Research Fund to a level equivalent to the sum of:

- (a) Budgeted operating expenses for the OFR for the applicable assessment period;
- (b) Budgeted operating expenses for the Council for the applicable assessment period;
- (c) Budgeted capital expenses for the OFR for the 12-month period beginning on the first day of the applicable assessment period;
- (d) Budgeted capital expenses for the Council for the 12-month period beginning on the first day of the applicable assessment period; and
- (e) An amount necessary to reimburse reasonable implementation expenses of the Corporation as provided under section 210(n)(10) of the Dodd-Frank Act.

§ 150.5 Calculation of assessments.

- (a) For each assessed company, the Department will calculate the total assessable assets in accordance with the definition in § 150.2.
- (b) The Department will allocate the assessment basis to the assessed companies in the following manner:
 - (1) Based on the sum of all assessed companies' total assessable assets, the Department will calculate the assessment fee rate necessary to collect the assessment basis for the applicable assessment period.
 - (2) The assessment payable by an assessed company for each assessment period shall be equal to the assessment fee rate for that assessment period multiplied by the total assessable assets of such assessed company.

§150.6 Notice and payment of assessments.

(a) No later than fifteen calendar days after the determination date, the Department will send to each assessed company a statement that:

(1) Confirms that such company has been determined by the Department to be an assessed company; and

(2) States the total assessable assets that the Department has determined will be used for calculating the company's assessment.

(b) If a company that is required to make an assessment payment for a given assessment period believes that the statement referred to in paragraph (a) of this section contains an error, the company may provide the Department with a written request for a revised statement. Such request must be received by the Department via email within 30 calendar days and must include all facts that the company requests the Department to consider. The Department will respond to all such requests within 21 calendar days of receipt thereof.

(c) No later than the 14 calendar days prior to the payment date for a given assessment period, the Department will send an electronic billing notification to each assessed company, containing the final assessment that is required to be paid by such assessed company.

(d) For the purpose of making the payments described in § 150.5, each assessed company shall designate a deposit account for direct debit by the Department through www.pay.gov or successor website. No later than the later of 30 days prior to the payment date for an assessment period, or [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], each such company shall provide notice to the Department of the account designated, including all information and authorizations required by the Department for direct debit of the account. After the initial notice of the designated account, no further notice is

required unless the company designates a different account for assessment debit by the Department, in which case the requirements of the preceding sentence apply.

(e) Each assessed company shall take all actions necessary to allow the Department to debit assessments from such company's designated deposit account. Each such company shall, prior to each assessment payment date, ensure that funds in an amount at least equal to the amount on the relevant electronic billing notification are available in the designated deposit account for debit by the Department. Failure to take any such action or to provide such funding of the account shall be deemed to constitute nonpayment of the assessment. The Department will cause the amount stated in the applicable electronic billing notification to be directly debited on the appropriate payment date from the deposit account so designated.

(f) In the event that, for a given assessment period, an assessed company materially misstates or misrepresents any information that is used by the Department in calculating that company's total assessable assets, the Department may at any time re-calculate the assessment payable by that company for that assessment period, and the assessed company shall take all actions necessary to allow the Department to immediately debit any additional payable amounts from such assessed company's designated deposit account.

(g) If a due date under this section falls on a date that is not a business day, the applicable date shall be the next business day.

Dated: March 6, 2020.

Kipp Kranbuhl,
Principal Deputy Assistant Secretary, Financial Markets,
Department of the Treasury.

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